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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,891	07/15/2003	Vincent De Laforcade	NONY 3.0-004	7321
530 7590 08/22/2007 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER DOAN, ROBYN KIEU	
			ART UNIT 3732	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/619,891

Applicant(s)

DE LAFORCADE, VINCENT

Examiner

Robyn Doan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 58,63,65-83,86 and 97-103 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 58,63,65-83,86 and 97-103 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejection's under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 86 and 97 are rejected under 35 U.S.C. 102(b) as being anticipated by Goldman et al (U.S. Pat. # 3,046,593).

With regard to claim 86, Goldman et al discloses an applicator (30) having a fixing means with a screw portion (31) adapted to screw fasten the applicator to a neck (25) of a container (1), an assembly skirt (39) having a free end and an annular bead (36) displaced from the free end and on an inside surface of the assembly skirt (when being assembled with the applicator 30, col. 3, lines 5-12), wherein the fixing means being situated between the free end and the annular bead (when the annular bead being assembled with the head). In regard to claim 97, the annular bead being a sealing bead (col. 3, line 7).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hulsch in view of Ogino et al and Schultz.

With regard to claim 58, Hulsch discloses a kit (fig. 4) comprising a receptacle (11) having a body (10), a neck (12) having an opening (17) into the body, the neck having a first portion (15) having a first inside diameter (see fig. 2) and a first fixing means (16), a second portion (at 12) locating between the body and the first portion having a second thread (13) and a second inside diameter, wherein the second diameter being greater than the first diameter, a shoulder (14) being between the first portion to the second portion, an accessory (30) configured for removably connection to the neck of the receptacle, an assembly skirt (34) that cooperates with the second portion of the neck, the assembly skirt having a sealing surface that abuts the shoulder when the accessory is fixed to the neck; Hulsch also shows the applicator (30) having a diameter which is greater than a diameter of the first portion of the neck (see fig. 4). Hulsch fails to show the sealing surface having an annular bead and a row of teeth extending from a first tooth to a last tooth, a distance between the first and last teeth being greater than a diameter of the first portion of the neck. Ogino et al discloses a similar type of receptacle as Hulsch, the receptacle of Ogino et al comprising a row of teeth (5, see fig. 3, Applicant is noted that Ogino et al shows the teeth being in circular configuration, however, the teeth still have at least one row of teeth; also, it is noted that filaments 5 are considered as teeth since "teeth" is merely a terminology) extending from a first tooth to a last tooth. Schultz discloses a container as discussed above having an applicator (41 see fig. 3) having an applicator holder (27) with fixing means

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(internal surface 67), the applicator having an assembly skirt (29) having a free end (at 51) and an annular bead (49) displaced from the free end and on an inside surface of the assembly skirt. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have any of these components available at the same time, e.g. as in a "kit". In other words, the individual components of applicant's kit are already available as prior art; merely combining the components under the rubric of a "kit" does not result in a novel invention, even taken as a whole. It is contemplated that the user or any other hair care professional can meet applicant's claimed invention by simply purchasing the Hulsch, Ogino et al and Schultz components and placing these components in proximity to each other, so as to fall under the rubric of a kit. Here, the novelty of the invention must reside in its whole, i.e. the kit, being greater than the sum of its parts, since the parts or components of the invention are already known in the art. In regard to claim 63, Hulsch shows the receptacle (10) adapted to hold contents and accessory having an applicator (38) adapted for use with the contents. In regard to claims 79-83, Hulsch discloses at least two accessories (20, 30), a first one including a cap (20) and a second one including an applicator (30) and wherein the two accessories each incorporating with the first and second portions of the neck. In regard to claim 98, Hulsch shows the shoulder (14) having a planar annular surface (see fig. 4) extending outwardly from the first portion, the shoulder being perpendicular to the neck. In regard to claim 99, Hulsch shows both of the fixing means includes threads (see fig. 4). In regard to claim 101, Hulsch in view of Ogino show the receptacle having plastic material (Ogino). In regard to claim 102, Hulsch shows the accessory being configured for

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removably connection to the neck of the receptacle by fastening only on the second fixing means (13) (see fig. 4). In regard to claim 103, Hulsch in view of Ogino et al and Schultz further show a closure (40, Hulsch) but fail to show the threads enable the closure to be connected to the first portion of the neck in a first direction and the accessory to be connected to the second portion of the neck in the first direction, it would have been an obvious matter of design choice to construct the threads enable the closure as discussed above, since such modification would involve a mere change in the design of the known component.

Claims 65-68, 70-72, 74 and 75 rejected under 35 U.S.C. 103(a) as being unpatentable over Hulsch in view of Ogino et al and Schultz as applied to claim 58 above, and further in view of Elmer et al (U.S. Pat. # 6,457,476).

With regard to claims 64-68, Hulsch in view of Ogino et al and Schultz disclose a kit comprising all the claimed limitations in claims 58, as discussed above except for at least one of the teeth having at least one dispenser orifice adapted to dispense the contents from the receptacle being spaced from the free end of the one of said teeth, at least one dispenser orifice substantially limits dispensing of the contents other than between the teeth. As to claims 70-72 and 74-75, Hulsch in view of Ogino et al also fail to show at least exterior of at least one tooth between the first and last teeth having a plurality of dispensing orifices, the plurality of orifices being positioned so as to oppose another one of the teeth and the applicator having at least six teeth, each including an orifice. Elmer et al discloses an applicator (20, figs. 2, 7) comprising one row of at least six teeth (fig. 2) being the same length, each tooth includes at least one orifice (62)

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being displaced from the free end of the tooth; Elmer et al also shows a pair of end teeth (fig. 2) having orifices (62, 68) which faces others of the at least one row of teeth (fig. 7), at least one tooth (50) located between the pair of end teeth having a plurality of orifices (62, 68, fig. 7) on the exterior of the one tooth, the plurality of orifices being located on opposite sides of the one tooth (fig. 7). Elmer et al inherently shows at least one dispenser orifice (62, 68) substantially limits dispensing of cosmetic other than between the teeth. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular structures of the teeth as taught by Elmer et al as discussed above into the applicator of Hulsch in view of Ogino et al and Schultz in order to effectively deliver the liquid to the hair of the user.

Claim 73 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hulsch in view of Ogino et al and Schultz and further in view of Kirschenbaum (U. S. Pat. # 2,270,529).

With regard to claim 73, Hulsch in view of Ogino discloses a kit comprising all the claimed limitations in claims 58, as discussed above except for at least one tooth having a groove extending from a free end of the tooth to the at least one orifice. Kirschenbaum discloses a comb applicator (fig. 3) comprising at least one tooth (76) having at least one dispenser orifice (79) being displaced from the free end of the one of said teeth and at least one tooth having a groove (80) extending from a free end (78) of the tooth to the at least one orifice. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular structures of the teeth as



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taught by Kirschenbaum as discussed above into the applicator of Hulsch in view of Ogino and Schultz in order to retard to rapid flow of the liquid down to the teeth.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/  
Primary Examiner  
Art Unit 3732

Rkd  
August 20, 2007